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Interim Co-Lead Class Counsel

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**WESTERN DIVISION**

DAVID LOWERY, individually and on  
behalf of himself and all others  
similarly situated,

Plaintiffs,

vs.

SPOTIFY USA INC., a Delaware  
corporation,

Defendants.

Case No. 2:15-cv-09929-BRO-RAOx

Judge: Hon. Beverly Reid O'Connell

**CONSOLIDATED CLASS ACTION  
COMPLAINT FOR COPYRIGHT  
INFRINGEMENT**

**DEMAND FOR TRIAL BY JURY**

1 MELISSA FERRICK, individually and  
2 doing business as Nine Two One Music  
and Right On Records/Publishing;  
3 JACO PASTORIUS, INC.; and  
GERENCIA 360 PUBLISHING, INC.,  
4 individually and on behalf of all others  
similarly situated,

5 Plaintiffs,

6 v.

7 SPOTIFY USA INC., a Delaware  
8 corporation, and DOES 1 through 10,

9 Defendants.

Case No. 16-CV-180-BRO-RAOx

1 Plaintiffs Melissa Ferrick individually and doing business as Nine Two One  
 2 Music and Right On Records/Publishing (“Ferrick”), Jaco Pastorius, Inc.  
 3 (“Pastorius”), and Gerencia 360 Publishing, Inc. (collectively, “Plaintiffs”) on  
 4 behalf of themselves and all other similarly situated owners of federal copyrights in  
 5 nondramatic musical works (“musical compositions” or “songs”) that were  
 6 reproduced and distributed without a license by Defendant Spotify USA Inc.  
 7 (“Spotify” or “Defendant”) and DOES 1-10 (collectively “Defendants”) during the  
 8 last three years, allege as follows.

### 9 NATURE OF THE ACTION

10 1. Under the Copyright Act, there are two separate copyrights in every  
 11 recorded song: one in the sound recording (“phonorecord”) itself, 17 U.S.C.  
 12 §102(7), and one in the musical composition embodied in that phonorecord, 17  
 13 U.S.C. §102(2). This case is brought to vindicate the rights of the owners of the  
 14 copyrights in the musical compositions embodied in phonorecords that Spotify has  
 15 reproduced and distributed – without a license – as part of its extraordinarily popular  
 16 interactive online subscription music streaming service (the “Service”).

17 2. Spotify launched the Service in the United States on or about July 14,  
 18 2011. Since that time, the Service has grown to over 70 million subscribers, raised  
 19 close to \$1 billion in private equity, and obtained a valuation in excess of \$8 billion.  
 20 To achieve that success, Spotify promised its subscribers that it would provide them  
 21 with “[a]ll the music you’ll ever need...for every moment.” But Spotify knew that  
 22 in order to fulfill its promise, it would either have to delay the launch of the Service  
 23 (and its process for immediately ingesting and offering new music) until such time  
 24 as it had obtained all necessary licenses, or it would have to employ a now familiar  
 25 strategy for many digital music services – infringe now, apologize later.

26 3. Spotify chose expediency over licenses. Thus, while Spotify has  
 27 profited handsomely from the music that it sells to its subscribers, the owners of  
 28

1 that music (in particular, songwriters and their music publishers) have not been able  
2 to share in that success because Spotify is using their music for free.

3       4. The path that Spotify should have chosen is set forth in the Copyright  
4 Act. A service like Spotify that is interested in reproducing and distributing musical  
5 compositions in phonorecords has two choices: it can negotiate direct licenses with  
6 the copyright owners of those musical compositions or it can pursue compulsory  
7 licenses under 17 U.S.C. §115. Either a direct license or a compulsory license  
8 would have permitted Spotify to make and distribute phonorecords embodying the  
9 musical compositions as part of the Service, including by means of digital  
10 phonorecord deliveries (“DPDs”), interactive streaming, and limited downloads.

11       5. While a license under 17 U.S.C. §115 is compulsory, it is not  
12 automatic. To obtain such a license, it was Spotify’s obligation to send a notice to  
13 each copyright owner “before or within thirty days after making, and before  
14 distributing any phonorecords of the work” of its “intention” use the work. 17  
15 U.S.C. §115(b)(1). This notice of intent (or, as it is commonly referred to, an  
16 “NOI”) is not merely a ministerial formality; it is a critical first step in the  
17 compulsory licensing process that alerts the copyright owner to the use of its  
18 musical composition and, in turn, the right to be compensated for that use. Because  
19 of its significance, the failure to timely serve or file an NOI “forecloses the  
20 possibility of a compulsory license and, in the absence of a negotiated license,  
21 renders the making and distribution of phonorecords actionable as acts of  
22 infringement.” 17 U.S.C. §115(b)(2). Even after sending an NOI, Spotify was then  
23 required to timely account to the copyright owner and pay royalties accordingly. 17  
24 U.S.C. §115(c).

25       6. For the musical compositions that are at issue in this litigation, Spotify  
26 did not negotiate direct licenses and did not avail itself of the compulsory licensing  
27 procedures in the Copyright Act. Instead, Spotify chose a third path: it outsourced  
28 its licensing and accounting obligations to the Harry Fox Agency (“HFA”), a music

1 publishing rights organization that was ill-equipped to obtain licenses for all of the  
2 songs embodied in the phonorecords distributed by Spotify. As a result, neither  
3 Spotify nor HFA directly licensed or timely issued NOIs for many of the musical  
4 compositions embodied in phonorecords that Spotify was reproducing and  
5 distributing on a daily basis as part of the Service.

6       7. The known failure by Spotify to obtain licenses for all of the musical  
7 compositions that it is exploiting caused it to recently announce that it “will invest in  
8 the resources and technical expertise to build a comprehensive publishing  
9 administration system to solve this problem.” See Ed Christman, “Spotify  
10 Announces Database To Properly Manage Royalties,” *Billboard* (Dec. 23, 2015),  
11 *available at* [http://www.billboard.com/articles/business/6820925/spotify-publishing-](http://www.billboard.com/articles/business/6820925/spotify-publishing-database-royalties)  
12 [database-royalties](http://www.billboard.com/articles/business/6820925/spotify-publishing-database-royalties). That is an investment and process that Spotify should have  
13 undertaken *before* it decided to reproduce and distribute phonorecords embodying  
14 unlicensed musical compositions to the Service’s millions of users, not over four  
15 years after Spotify launched the Service in the United States. At this point,  
16 Spotify’s failure to properly obtain licenses is much more than what it  
17 euphemistically describes as an “administration system” problem; it is systemic and  
18 willful copyright infringement for which actual and statutory damages are the  
19 remedy. Therefore, Plaintiffs bring this class action for copyright infringement on  
20 behalf of themselves and all similarly situated owners of musical compositions that  
21 were reproduced and distributed by Defendants without a license during the last  
22 three years.

### 23 THE PARTIES

24       8. Plaintiff Melissa Ferrick, a resident of Newburyport, Massachusetts, is  
25 a nationally recognized singer-songwriter who has released seventeen albums over  
26 the past two decades, with a catalog of over one hundred and fifty copyrighted  
27 musical compositions. Ferrick is an eight-time Boston Music Award winner and is  
28 regarded as one of the most prolific songwriters of her generation. She tours

1 regularly throughout North America and has shared the stage with Morrissey, Marc  
2 Cohn, Paul Westerberg, Dwight Yoakam, John Hiatt, Weezer, Tegan and Sara, Bob  
3 Dylan, Ani DiFranco, k.d. Lang, Suzanne Vega, Joan Armatrading, and many  
4 others. Ferrick signed in the early 1990s with Atlantic Records, and in 1993  
5 released her debut album, “Massive Blur,” which was then followed by “Willing to  
6 Wait” in 1995. Critical acclaim for Ferrick’s music has continued to this day.  
7 Ferrick’s 2011 album “Still Right Here” debuted on Billboard’s Heat-Seekers  
8 Album Chart, won an 8th annual International Acoustic Music Award, and garnered  
9 two Independent Music Award nominations. Her 2013 album, “The Truth Is,” won  
10 the 2014 Independent Music Award for Alt-Country Album of the Year and her  
11 2015 self-titled album was referred to by the Boston Globe as “one of the year’s  
12 most singular albums.” Ferrick has been a part time Associate Professor in the  
13 Songwriting Department at Berklee College of Music since 2013, and the Artistic  
14 Director for Berklee’s Five Week Summer Program since 2009. Her songs have  
15 been streamed approximately one million times by Spotify without a license.

16       9. Plaintiff Jaco Pastorius, Inc. (“Pastorius”) is a Florida corporation with  
17 its principal place of business in Melbourne, Florida. It was formed on or about  
18 January 3, 1995, subsequent to the untimely death of John Francis Anthony  
19 Pastorius III, known professionally as Jaco Pastorius (“Jaco”) to own Jaco’s songs.  
20 Jaco was a highly acclaimed American jazz musician, composer, big band leader  
21 and electric bass player, considered by many to be the best and most influential bass  
22 guitarist in history. Over his career, Jaco released fifteen solo albums, appeared on  
23 eight Weather Report albums, and collaborated and performed on many others from  
24 1974-1986. He has collaborated and guested on albums with legendary artists  
25 including Joni Mitchell, Pat Metheny, Ian Hunter, and Al Di Meola, and had  
26 numerous jazz greats perform with him on his solos projects. He taught bass at the  
27 University of Miami in 1973 at the age 22, and went on to release his debut album in  
28 1976, the eponymous *Jaco Pastorius*, which was considered a breakthrough album

1 for the electric bass. It met with critical acclaim and is still viewed as the best bass  
2 album ever recorded. Performing on the album was a veritable “Who’s Who” of  
3 jazz, including Herbie Hancock, Wayne Shorter, David Sanborn, Lenny White,  
4 Hubert Laws, Don Alias, and Michael Brecker, many of whom Jaco continued to  
5 work with on future projects. In 1976, Jaco joined Weather Report, one of the pre-  
6 eminent jazz fusion bands in the 1970s and 1980s. Jaco was featured on  
7 the Grammy Award-nominated *Heavy Weather* in 1977, an album which showcased  
8 his bass playing and songwriting skills. After leaving Weather Report in late 1981,  
9 he went on to pursue a big band solo project, resulting in his second solo  
10 release, *Word of Mouth*, which reunited him with Herbie Hancock, Wayne  
11 Shorter and Hubert Laws. He died on September 21, 1987 at the age of 35. Jaco  
12 received two Grammy Award nominations in 1977 for his debut album, including  
13 Best Jazz Performance by a Group and Best Jazz Performance by a Soloist for  
14 “Donna Lee,” and received another nomination in 1978, Best Jazz Performance by a  
15 Soloist, for his work on Weather Report’s *Heavy Weather*. Jaco was inducted into  
16 the Down Beat Jazz Hall of Fame posthumously in 1988, one of only seven bassists  
17 ever to be so honored, and the only electric bass guitarist among the inductees. He  
18 has been called “arguably the most important and ground-breaking electric bassist in  
19 history” (Adrian Belew, *New Directions in Modern Guitar*, Hal Leonard  
20 Publications (1986)), and described by William C. Banfield, director of Africana  
21 Studies, Music and Society at Berklee College, as one of the few original American  
22 virtuosos who defined a musical movement, along with Jimi Hendrix, Louis  
23 Armstrong, Thelonious Monk, Charlie Christian, Bud Powell, Charlie Parker, Dizzy  
24 Gillespie, Sarah Vaughan, Bill Evans, Charles Mingus and Wes Montgomery  
25 (William C. Banfield, *Cultural Codes: Makings of a Black Music Philosophy*  
26 (2009), p. 161). Jaco’s songs have been streamed millions of times by Spotify  
27 without a license.



10. Gerencia 360 Publishing, Inc. (“Gerencia 360 Publishing”) is part of a group of music entertainment based companies started by Luis Del Villar in 2013. Gerencia 360 Publishing has a principal place of business in Downey, California. Mr. Del Villar incorporated Gerencia 360 Publishing in the State of California in 2014, together with Gerencia 360 Music, Inc., Gerencia 360 Management, Inc., and Gerencia 360 Entertainment, Inc. (collectively, “Gerencia 360 Companies”). The word “gerencia” translates from Spanish to “management” and in conjunction with “360,” it defines the full scope of management provided by the Gerencia 360 Companies for its artists. The Gerencia 360 Companies consist of a record label, music publishing company, and talent management company. The Gerencia 360 Companies occupy a significant position in the regional Mexican music industry. Gerencia 360 Publishing owns copyrights to the songs of artists on the Gerencia 360 Music, Inc. (“Gerencia 360 Music”) record label. Gerencia 360 Music covers all genres, with a specialty in regional Mexican music. Gerencia 360 Publishing also owns copyrights to the songs of other successful artists who do not record on the Gerencia 360 Music label.

11. Songs owned by Gerencia 360 Publishing have been streamed multiple millions of times by Spotify without a license. A small sampling of those songs include:

- “Adivina” – streamed over 4 million times – written by Luciano Luna Diaz and performed by Noel Torres, an internationally acclaimed singer/songwriter who is recognized as one of the leading male recording artists of the regional Mexican music genre
- “Me Interesas” – streamed over 6 million times – written by Luciano Luna Diaz and performed by Noel Torres
- “Para Que Tantos Besos” – streamed over 5 million times – written by Luciano Luna Diaz and performed by Noel Torres



- 1 • “Amaneci Con Ganas” – streamed over 4.2 million times combined,  
2 over 2.7 million on the album and over 1.5 million times as a single –  
3 written by Maria Luisa Inzunza Favela and Jose Alberto Inzunza  
4 Favela, and performed by Noel Torres
- 5 • “Mujeres de Tu Tipo” – streamed over 3.7 million times – written by  
6 Jose Luis Del Villar and performed by Adriel Favela, a Mexican  
7 singer, songwriter and multi-instrumentalist specializing in norteño  
8 and corridos
- 9 • “Te Acuerdas De Tu Amiga” – streamed over 1.4 million times –  
10 written by Jose Alberto Inzunza Favela and Luciano Luna Diaz, and  
11 performed by Adriel Favela
- 12 • “Tomen Nota” – streamed over 1.8 million times – written by Jesus  
13 Jimenez Carrillo and performed by Adriel Favela
- 14 • “Es Tiempo De Guerra” – streamed over 1.5 million times – written  
15 by Ricardo Orrantia Martinez and Maria Luisa Inzunza Favela, and  
16 performed by Adriel Favela
- 17 • “Mi Primera Vez” – streamed over 920,000 times – written by Jose  
18 Alberto Inzunza Favela and Jose Luis Del Villar, and performed by  
19 Jonatan Sanchez, a captivating 17 year old singer and guitar player  
20 with a rapidly rising fan base
- 21 • “Mis Gustos, Mis Placeres” – streamed over 1.3 million times –  
22 written by Adriel Guadalupe Apodaca and Jose Luis Del Villar, and  
23 performed by Adriel Favela, featuring Jonatan Sanchez
- 24 • “Perfecta” – two different version streamed over a combined 580,000  
25 times – written by Luciano Luna Diaz and Maria luisa Inzunza Favela,  
26 and peformed by Jonatan Sanchez
- 27 • “Me He Dado Cuenta” – streamed over 440,000 times – written by  
28 Jose Luis Del Villar and Omar Valenzuela, and performed by Martin

Castillo, an American-born alternative corrido singer, songwriter, drummer, and producer, whose solo recordings have been hits on the Mexican Regional charts, and who is widely known by fans as “the King of Corrido” (king of the ballads) and “El Toron” (the eminence)

- “Asi Sera” – streamed over 500,000 times – written by Jose Luis Del Villar and performed by Martin Castillo

12. In 2014, SESAC, the second oldest performing rights organization in the United States, gave Latina Radio Performance Awards to the songs “Adivina” performed by Noel Torres, written by Luciano Luna, and co-published by Del New Music and Gerencia 360; “Me Interesas” performed by Noel Torres, written by Luciano Luna, and published by Gerencia 360; and “Me He Dado Cuenta” performed by Martín Castillo, written by Luis Del Villar and Omar Valenzuela, and published by Gerencia 360. Gerencia 360 is clearly a major force in the Latina market, owning songs with huge popularity and dominating the charts in the Mexican regional music arena. Spotify is a Delaware corporation with its principal place of business in New York, New York. Spotify owns and operates the Service – an online interactive music streaming service, which can be principally accessed at [www.spotify.com](http://www.spotify.com). The Service consists of both an advertisement-supported service that is free to subscribers and a premium service that costs \$9.99 per month and is advertisement-free. Spotify is qualified to do business in State of California and has registered as a foreign corporation with the California Secretary of State. Spotify also has a designated agent for service of process in Los Angeles, National Registered Agents, Inc., with an address of 818 W. Seventh St., Ste 930, Los Angeles, CA 90017.

13. It is actively doing business in California with offices in Los Angeles and San Francisco. Spotify operates the Service in California, has millions of subscribers and end users in California, has entered into contracts and other

1 transactions in California (including with record labels, publishers and developers),  
2 and generates millions of dollars in revenue from California residents.

3 14. Spotify has previously admitted in other federal filings that personal  
4 jurisdiction is proper in California. *PacketVideo Corp v. Spotify USA Inc., et. al*,  
5 Case No. CV 11-1659-IEG-WMCx (S.D. Cal. 2011), Dkt. 14 at ¶ 9 (“Defendants do  
6 not dispute that this Court has personal jurisdiction over Spotify USA, Inc. and  
7 Spotify Limited.”).

8 15. Spotify’s User’s Terms of Use specify California as the choice of law  
9 for all disputes with its users in the United States and requires any dispute, claim, or  
10 controversy to be resolved in state or federal courts in one of two states – California  
11 being one of them.

12 16. Spotify Developer’s Terms of Use specify California as the choice of  
13 law for all disputes with its third-party developers worldwide and require any  
14 dispute, claim, or controversy to be resolved in state or federal courts in only one  
15 state – California.

16 17. In 2013, in an attempt to invoke the provisions of the Class Action  
17 Fairness Act (CAFA) for the removal of an action filed against it in California, Spotify  
18 relied on its extensive contacts with California and its residents, including  
19 declaration that those residents in 2013 had spent more than \$15 million for  
20 subscriptions to Spotify’s paid Premium service. (*Bleak v. Spotify USA, Inc.*, Case  
21 No. CV 13-5653-CRB (N.D. Cal. 2013), Dkt. 2 at ¶ 7(d) (Declaration of Göran  
22 Sander, analyst in Spotify’s Analytics teams).

23 18. By its own admissions, Spotify maintains two offices in California,  
24 including one in this District.

25 19. Spotify routinely seeks to employ, and does employ senior level  
26 employees in California. Spotify currently employs the head of artist services and  
27 the head of original content licensing in its Los Angeles office. It is also currently  
28

1 seeking a Director of Publishing and Songwriter Relations in Los Angeles and a  
2 Strategic Partnership Manager for Software and Technology in San Francisco.

3 20. On October 10, 2014, in collaboration with the Music Managers'  
4 Forum (MMF) and the Featured Artists Coalition (FAC), Spotify specifically hosted  
5 a meeting in Los Angeles to discuss streaming with artists as part of its artist  
6 outreach campaign.

7 21. On February 13, 2016, Spotify threw a "Creators party" at Cicada in  
8 Los Angeles to appeal to artists, producers, and songwriters.

9 22. Spotify has sought to transfer cases to California on the grounds that it  
10 is a more convenient forum. *iMTX Strategic, LLC, v. Spotify USA, Inc.*, Case No.  
11 CV 15-325-GMS (D. Del. 2014) Dkt. 12 (Spotify's motion to transfer venue to the  
12 Northern District of California).

13 23. In 2009, Spotify's music content team entered into a licensing deal with  
14 InGrooves, which is based in San Francisco, California. The InGrooves catalogue  
15 includes artists like Dolly Parton, The Crystal Method, Andrew Bird, Too \$hort, and  
16 Thievery Corporation.

17 24. The true names and capacities (whether individual, corporate, associate  
18 or otherwise) of the defendants named herein as Does 1 through 10, inclusive, are  
19 unknown to Plaintiffs, who therefore sue said defendants by such fictitious names.  
20 Plaintiffs will amend this Complaint to allege their true names and capacities when  
21 such have been ascertained. Upon information and belief, each of the Doe  
22 defendants herein is responsible in some manner for the occurrences herein alleged,  
23 and Plaintiffs' and class members' injuries as herein alleged were proximately  
24 caused by such defendants' acts or omissions.

25 25. Plaintiffs are informed and believe, and on that basis allege, that at all  
26 times mentioned in this Complaint, Spotify and each of the Doe defendants were the  
27 agent of each other and, in doing the things alleged in this Complaint, were acting  
28 within the course and scope of such agency.

**JURISDICTION AND VENUE**

26. This is a civil action seeking damages and injunctive relief for copyright infringement under the Copyright Act, 17 U.S.C. §101 *et seq.*

27. This Court has original subject matter jurisdiction of this action pursuant to 28 U.S.C. §§1331 and 1338(a).

28. This Court has personal jurisdiction over Defendants because, among other things, they do continuous and systematic business in California and in this District and maintain one or more offices and employ personnel in California. Additionally, as described above, Defendants have conceded they are subject to personal jurisdiction in California and have directed their business conduct to California. Defendants have also committed acts of copyright infringement in California and have performed acts directed at and causing harm in California.

29. Venue is proper in this District pursuant to 28 U.S.C. §§1391(b) and (c) and 1400(a) because Spotify is subject to personal jurisdiction in this District and because a substantial part of the events or omissions by Spotify giving rise to the claims occurred in this District.

**CLASS ALLEGATIONS**

30. Plaintiffs bring this action as a class action pursuant to Fed. R. Civ. Proc. 23 on behalf of themselves and on behalf of a class of similarly situated copyright owners of musical compositions defined as:

All persons or entities who own the copyright in a musical composition: (a) for which a certificate of registration has been issued or applied for; and (b) that was reproduced and distributed through interactive streaming and/or limited downloads by Defendants without a license during the last three years.

31. This action has been brought and may be properly maintained as a class action because there is a well-defined community of interest in the litigation and the members of the proposed class are readily and easily ascertainable and identifiable.

1        32. The members of the class are so numerous that joinder of all members  
2 is impracticable. Plaintiffs are informed and believe, and on that basis allege, that  
3 there are thousands of members in the class who can be readily located, identified  
4 from various databases and records (including those maintained by Spotify, the  
5 United States Copyright Office, and HFA) and through discovery, and notified of  
6 this action.

7        33. Plaintiffs' claim for copyright infringement is typical of the claims of  
8 the members of the class, and Plaintiffs' interests are consistent with and not  
9 antagonistic to those of the other members of the class they seek to represent.  
10 Plaintiffs and all members of the class have sustained damages and face irreparable  
11 harm arising out of Defendants' continued infringement as alleged herein and, thus,  
12 are entitled to recover actual damages and/or statutory damages and obtain  
13 injunctive relief to prevent further wrongful conduct by Defendants.

14        34. Plaintiffs have no interests that are adverse to, or which conflict with,  
15 the interests of the absent members of the class and they are able to fairly and  
16 adequately represent and protect the interests of such a class. Plaintiffs believe  
17 strongly in the protection of the copyrights of songwriters and music publishers.  
18 Plaintiffs have raised a viable claim for copyright infringement of the type  
19 reasonably expected to be raised by members of the class, and will diligently and  
20 vigorously pursue that claim. If necessary, Plaintiffs may seek leave of the Court to  
21 amend this Complaint to include additional class representatives to represent the  
22 class or additional claims as may be appropriate. Plaintiffs are represented by  
23 experienced, qualified, and competent counsel who are committed to prosecuting  
24 this action.

25        35. Common questions of fact and law exist as to all members of the class  
26 that plainly predominate over any questions affecting only individual members of  
27 the class. These common legal and factual questions, which do not vary from class  
28 member to class member, and which may be determined without reference to the

individual circumstances of any class member, include (without limitation) the following:

(A) Whether Defendants reproduced and distributed musical compositions through interactive streaming and/or limited downloads without a license during the last three years;

(B) Whether Defendants' reproduction and distribution of musical compositions through interactive streaming and/or limited downloads without a license constitutes direct infringement in violation of the Copyright Act, 17 U.S.C. §101 *et seq.*;

(C) Whether Defendants' acted willfully with respect to the acts complained of herein;

(D) The basis and method for determining and computing damages, including statutory damages; and

(E) Whether Defendants' infringing conduct is continuing, thereby entitling the members of the class to injunctive or other relief.

36. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all class members is impracticable. The claims of the individual members of the class may range from smaller sums to larger sums. Thus, for those class members with smaller claims, the expense and burden of individual litigation may not justify pursuing the claims individually. And even if every member of the class could afford to pursue individual litigation, the court system could not be so encumbered. It would be unduly burdensome to those courts in which individual litigation of numerous cases would otherwise proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual issues. By contrast, the maintenance of this action as a class action presents few management difficulties, conserves the resources of



1 the parties and court system, and protects the rights of each member of the class.  
 2 Plaintiffs anticipate no difficulty in the management of this action as a class action.

### 3 **CLAIM FOR RELIEF**

#### 4 **(Copyright Infringement – Against All Defendants)**

5 37. Plaintiffs hereby incorporate the allegations set forth above in  
 6 paragraphs 1 through 20 above, as though fully set forth herein.

7 38. Under §106 of the Copyright Act, the copyright owner of a musical  
 8 composition has the exclusive rights to reproduce and distribute the compositions in  
 9 phonorecords. 17 U.S.C. §106(1) and (3). This includes the exclusive rights to  
 10 make or authorize DPDs, interactive streams, and limited downloads of the musical  
 11 compositions through subscription or non-subscription online digital music services.  
 12 *See* 17 U.S.C. §115(d), 37 C.F.R. §§385.10, 385.11.

13 39. Spotify's online interactive music streaming service, [www.spotify.com](http://www.spotify.com),  
 14 is offered to end users in the United States on an advertising-free paid subscription  
 15 basis or an advertiser-supported no-subscription basis. Spotify distributes  
 16 phonorecords embodying musical compositions to its end users through interactive  
 17 streaming and limited downloads available on their computers and mobile devices.  
 18 Plaintiff is further informed and believes, and on that basis alleges, that Spotify also  
 19 makes server copies in the United States of phonorecords embodying the musical  
 20 compositions at issue in this litigation.

21 40. In order to lawfully make and distribute phonorecords embodying the  
 22 musical compositions as set forth above, Spotify must have first obtained not only a  
 23 license for each individual phonorecord from its owner(s), but also a separate  
 24 license for the underlying musical composition that is embodied in each separate  
 25 phonorecord from the copyright owner of such composition. Spotify can either  
 26 license musical compositions directly or by obtaining a compulsory license in  
 27 accordance with the terms of 17 U.S.C. §115 by serving a timely NOI. Failure to  
 28 serve or file the requisite NOI "within thirty days after making, and before

1 distributing any phonorecords of the work...forecloses the possibility of a  
2 compulsory license and, in the absence of a voluntary license, renders the making  
3 and distribution of phonorecords actionable as acts of copyright infringement.” 17  
4 U.S.C. §115(b)(1) and (2).

5 41. Spotify did not have and does not have a comprehensive system of  
6 music publishing administration in place necessary to license all of the songs  
7 embodied in phonorecords which it ingests and distributes by means of interactive  
8 streaming and temporary downloads. Rather than decline to distribute phonorecords  
9 embodying musical compositions that are unlicensed, however, Spotify elected  
10 instead to engage in wholesale copyright infringement.

11 42. Ferrick is the registered copyright owner of all of the musical  
12 compositions listed on Exhibit A attached hereto and incorporated herein by this  
13 reference (“Ferrick’s musical compositions”). Ferrick’s musical compositions have  
14 been distributed through interactive streaming and temporary downloads by Spotify  
15 approximately one million times within the last three years. Ferrick is further  
16 informed and believes, and on that basis alleges, that server copies thereof have also  
17 been made by Spotify within the last three years. Ferrick’s musical compositions  
18 have not been licensed by Spotify either directly or by a compulsory license in  
19 accordance with 17 U.S.C. §115.

20 43. Pastorius owns all interests in Jaco’s registered copyrighted musical  
21 compositions that he owned at the time of his death, including any interests that  
22 were owned by his first wife (“Pastorius’ musical compositions”). A representative  
23 sampling of the Pastorius musical compositions are listed on Exhibit B attached  
24 hereto and incorporated herein by this reference.

25 44. Pastorius’ musical compositions have been distributed through  
26 interactive streaming and temporary downloads by Spotify millions of times within  
27 the last three years. Pastorius is further informed and believes, and on that basis  
28 alleges, that server copies thereof have also been made by Spotify within the last

1 three years. Pastorius' musical compositions have not been licensed by Spotify  
2 either directly or by a compulsory license in accordance with 17 U.S.C. §115.

3 45. Gerencia 360 Publishing is the registered copyright owner or  
4 registration pending copyright owner of all of the musical compositions listed on  
5 Exhibit C attached hereto and incorporated herein by this reference ("Gerencia 360  
6 Publishing's musical compositions"). Gerencia 360 Publishing's musical  
7 compositions have been distributed through interactive streaming and temporary  
8 downloads by Spotify millions of times within the last three years. Gerencia 360  
9 Publishing is further informed and believes, and on that basis alleges, that server  
10 copies thereof have also been made by Spotify within the last three years. Gerencia  
11 360 Publishing's musical compositions have not been licensed by Spotify either  
12 directly or by a compulsory license in accordance with 17 U.S.C. §115.

13 46. Plaintiffs are further informed and believe, and on that basis allege, that  
14 the musical compositions owned by the members of the class have been distributed  
15 by Spotify through interactive streaming and temporary downloads and that Spotify  
16 has also made server copies thereof during the last three years, all without either a  
17 direct or compulsory license.

18 47. Spotify's unlawful reproduction and distribution of the musical  
19 compositions owned by Plaintiffs and the members of the class as alleged  
20 hereinabove constitutes copyright infringement under the Copyright Act. 17 U.S.C.  
21 §101 *et seq.*

22 48. Spotify's acts of infringement have been willful, intentional, and  
23 purposeful, in disregard of and indifference to the rights of Plaintiffs and the  
24 members of the class.

25 49. As a direct and proximate result of Defendants' infringement of  
26 Plaintiffs' copyrights and the copyrights of the members of the class, pursuant to 17  
27 U.S.C. §504(c), Plaintiffs and the class members are entitled to recover up to  
28 \$150,000 in statutory damages for each musical composition infringed.

1 Alternatively, at their election, pursuant to 17 U.S.C. §504(b), Plaintiffs and the  
2 class members are entitled to their actual damages, including Spotify's profits from  
3 infringement, as will be proven at trial.

4 50. Plaintiffs and the class members are also entitled to recover attorney's  
5 fees and costs pursuant to 17 U.S.C. §505, and prejudgment interest according to  
6 law.

7 51. Spotify is causing, and unless enjoined by the Court will continue to  
8 cause, Plaintiffs and the class members irreparable harm for which they have no  
9 adequate remedy at law. Plaintiffs and the class members are entitled to an  
10 injunction under 17 U.S.C. §502 prohibiting the continued infringement of their  
11 musical compositions.

#### 12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of all other  
14 members of the class, pray for Judgment against Spotify and the Doe Defendants,  
15 and each of them, as follows:

16 A. Determining that this is a proper class action maintainable pursuant to  
17 Rule 23 of the Federal Rules Civil Procedure, certifying Plaintiffs as class  
18 representatives and Plaintiffs' counsel as class counsel;

19 B. For compensatory and/or statutory damages in an amount in excess of  
20 \$200 million, according to proof;

21 C. A temporary, preliminary, and permanent injunction enjoining and  
22 restraining Defendants, and their respective agents, servants, directors, officers,  
23 principals, employees, representatives, subsidiaries and affiliated companies,  
24 successors, assigns, and those acting in concert with them or at their direction, and  
25 each of them, from continued unlicensed reproduction and distribution of the  
26 copyrighted musical compositions owned by Plaintiffs and the members of the class;

27 D. For pre- and post-judgment interest.  
28

1 E. For such fees and costs (including reasonable attorney's fees) incurred  
2 herein as permitted by law.

3 F. For such other and further relief as the Court deems just and proper.

4  
5 Dated: June 27, 2016

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17 By: /s/ Maryann R. Marzano  
18 Maryann R. Marzano  
19 *Interim Co-Lead Class Counsel*  
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**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury of the claim alleged in this Complaint.

Dated: June 27, 2016

HENRY GRADSTEIN  
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*Interim Co-Lead Class Counsel*